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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In re:

Amendment of Part 74 of the
Commission's Rules With Regard
to the Instructional Television
Fixed Service

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MM Docket No. 93-24

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
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JOINT COMMENTS OF EDUCATIONAL PARTIES

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August 29, 1994

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Summary

The Educational Parties -- education associations, public and private educational institutions, state agencies, public TV stations and ITFS operators -- support the adoption of a window filing procedure, but only if the FCC's rules provide for at least quarterly windows. The Educational Parties believe that fewer than four filing opportunities each year will deny reasonable flexibility for educators seeking to respond to educational needs. The ITFS service will likewise be throttled if the FCC allows the staff to delay opening windows so as to slow the flow of applications to a "manageable" trickle.

The Educational Parties now believe the FCC's focus with respect to the other proposals in this proceeding should be on efficiency of processing, not on deterrence of application abuse. Thus, the FCC should not add substantial new application requirements that will burden ITFS applicants and FCC staff alike. Current FCC requirements are sufficient to ensure that ITFS stations will be used to advance a legitimate education service. To deter abuse, the FCC need only enforce current requirements swiftly and surely when deficiencies are pointed out.

Consistent with the above, the Educational Parties support, to at least some degree, the proposals relating to applications caps, assignment of construction permits, offset operation, receive site interference protection, FAA authorization and interference studies. They oppose for the most part the proposals relating to financial

qualification, expedited processing, application of the four-channel rule, major modifications, reasonable assurance of receive sites and accreditation of applicants.

Finally, the Educational Parties are disturbed by what appears to be the FCC's overly restrictive view about the nature of legitimate educational ITFS use. Distance learning in the United States now seeks to reach all students -- even adults who may receive their programming at places other than school sites. The FCC should not focus all its attention on in-school service, important as that service may be.

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American Council on Education, Arizona Board of Regents for Benefit of the University of Arizona, California State University - Sacramento, Instructional Telecommunications Consortium of the American Association of Community Colleges, Kirkwood Community College, St. Louis Regional Educational and Public Television Commission, South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board, University of Maine System, University of Wisconsin System and University System of the Ana G. Mendez Educational Foundation (jointly, the "Educational Parties"), submit these comments in response to the Order and Further Notice of Proposed Rulemaking in MM Docket 93-24, FCC 94-148 (released July 6, 1994) ("Further Notice"), relating to the procedural rules governing the Instructional Television Fixed Service.

The Educational Parties

The Educational Parties are higher education associations, public and private educational institutions, state agencies, public television stations and ITFS operators throughout the United States and Puerto Rico. The Educational Parties are as follows:

The American Council on Education. ACE, founded in 1918, is one of the nation's premier higher education organizations. Its members include more than 1,500 colleges and universities, both public and private, as well as other higher education groups. ACE seeks to promote and preserve the goals of higher education, representing the interests of its constituent institutions, their students, faculty and administrators.

Arizona Board of Regents for Benefit of the University of Arizona. The University of Arizona has been active for many years in public broadcasting and educational telecommunications. UA operates 16 ITFS and three OFS channels in Tucson, as well as public TV, public radio, TV and FM translators and satellite facilities.

California State University - Sacramento. CSU-Sacramento is part of the largest undergraduate teaching university in the United States and a significant user of distance learning technologies, including ITFS, satellite and compressed video.

Instructional Telecommunications Consortium of the American Association of Colleges. ITC is a national organization composed of and directed toward meeting the needs of educators and organizations involved in higher education, instructional telecommunications and distance learning. ITC has over 400 institutional members.

AACC and the more than 1,200 community colleges the Association represents seek to serve the public interest by providing student access to excellent higher education programs.

Kirkwood Community College. Kirkwood Community College in Cedar Rapids, Iowa, is a pioneer in the operation of ITFS facilities offering for-credit televised instruction, having operated the Kirkwood Telecommunications System since 1980. It currently offers over 50 live, interactive classes to some 2,000 students per semester over its multiple ITFS/OFS/fiber optic system. The system also serves 20 school districts with teacher in-service training and shared high school courses, as well as 1,500 adults enrolled in recertification and continuing education programs.

St. Louis Regional Educational and Public Television Commission. The Commission is licensee of noncommercial educational television Station KETC, Channel 9, St. Louis. It also operates an ITFS station in the St. Louis Metropolitan area. Through these facilities, the Commission provides instructional and educational programming to thousands of students in the metropolitan area.

South Carolina Educational Television Commission. SCETV is an agency of the State of South Carolina charged with the responsibility of operating the state's public television and radio networks (composed of 11 television stations and eight radio stations), as well as the state's extensive educational telecommunications system. SCETV is the nation's largest single ITFS user, with 65 stations delivering educational programming to virtually every school in the state.

State of Wisconsin - Educational Communications Board. ECB is an agency of the State of Wisconsin overseeing educational telecommunications activities within the state. ECB operates the Wisconsin public television and radio networks, as well as a number of ITFS facilities.

University of Maine System. UMS, through the University of Maine at Augusta, has become one of the country's largest ITFS users, operating 30 ITFS stations in seven regions of the state. UMS is recognized as an innovator in distance learning.

University of Wisconsin System. UWS is a major state university system operating 13 campuses throughout Wisconsin. It is the licensee of public TV, public radio and ITFS facilities and is active in the development and use of instructional telecommunications technologies.

University System of the Ana G. Mendez Educational Foundation. The Foundation operates three institutions of higher education in Puerto Rico, as well as two public television stations and a developing island-wide ITFS network. It is a founding member of the Hispanic Educational Satellite Service and a strong proponent of distance learning, especially for adult learners in the work place.

FCC Proposal

In the Further Notice, the FCC once again seeks comment on its proposal to adopt a window filing procedure for ITFS instead of the current A/B cutoff approach. Under the proposed window procedure, applicants for new ITFS stations and for major changes could file their applications only during windows that would be announced at

least 60 days in advance. At the close of a window, all acceptable applications on file would be cut off from later-filed competing applications.

The FCC would put the applications on public notice and accept petitions to deny, but not competing applications. Qualified applications not mutually exclusive with other applications would then be granted, while winners would be selected from among mutually exclusive applications pursuant to the existing point-based selection process.

The FCC also proposes a variety of rule changes to improve the application process, many of which would impose new requirements on ITFS applicants. The FCC expects that a filing window procedure, combined with these other proposals, could deter speculative filings and increase processing efficiencies for ITFS applications.

**General Response of Educational
Parties to the Further Notice**

Ironically, the Further Notice's two goals -- increased efficiency and deterrence of speculative applications -- work to a significant degree at cross purposes with each other. The window procedure may possibly increase processing efficiency by eliminating some of the double processing characterizing the A/B window approach.^{1/}

^{1/} The Educational Parties are not convinced that the window procedure eliminates the double-processing problem entirely. The staff will still have to engage in some degree of processing to determine which applications are "acceptable" for the public notice and which ones are mutually exclusive with other applications. The staff will then have to await the conclusion of the petition to deny period before processing applications to grant or denial. This process does not seem all that different from that taking place under the A/B cutoff approach.

It will also eliminate the problem of copy-cat mutually exclusive filings. However, many of the proposals designed to tighten FCC application standards pile on new requirements that will require substantial new processing efforts, thus undercutting the efficiency of the window procedure itself.

Having given these proposals careful consideration, the Educational Parties support the window filing procedure, but only if windows are opened on a relatively regular, frequent basis. The Educational parties believe that other rule changes should focus on efficiency of processing and not add substantial new application requirements that will burden ITFS applicants and FCC staff alike.^{2/} The Educational Parties have come to believe that, for the most part, current FCC application requirements are sufficient to ensure that ITFS stations will be used to advance the educational purposes for which the ITFS service was intended. To deter abuse, the Commission would do better to enforce current requirements swiftly and surely in response to deficiencies pointed out by interested parties in petitions to deny. The Educational Parties are convinced that such enforcement, largely lacking heretofore, would quickly bring the relatively few worst offenders to heel.

^{2/} The Educational Parties concede that some of the proposals to deter abuse were originally advanced in their Joint Comments filed in response to the Notice of Proposed Rulemaking in this docket, FCC 93-90. To the extent noted below, the Educational Parties have reconsidered their views, especially in light of the cumulative burdens that would result from the requirements proposed by themselves, by other commenters, and by the FCC on its own motion.

The Educational Parties are also concerned that the FCC will seek processing "efficiencies" under the window procedure by denying reasonable flexibility to educational entities who need to respond on a timely basis to developing educational needs. This would happen if the staff were to delay the opening of windows so as merely to slow the flow of applications to a "manageable" trickle. The Educational Parties believe that a procedure allowing new and major changes only once and twice a year, or perhaps less often than that, would virtually strangle the further development of both ITFS and wireless cable.

Finally, the Educational Parties are disturbed by an overly-restrictive view about the educational character of ITFS that permeates the "other proposals." The Further Notice seems to be based on the notion that ITFS use is legitimate and creditable only when the station is used to transmit formal instructional programming to students sitting in classrooms in accredited schools. To be sure, this has always been a central purpose in the ITFS service. However, the focusing exclusively on such use ignores the developing direction of distance learning, which seeks to reach all nature of students, particularly adults, who may receive their programming at the work place, at

home, or at other non-school receive sites.^{3/} As noted below, the Educational Parties believe that the FCC should not adopt rules that fail to credit such learning.

The Window Filing System

The Educational Parties support changing to a window filing procedure for new ITFS applications and major changes, but only if the FCC commits to opening windows on a relatively frequent basis. To the Educational Parties, this means at least four windows per year. Ominously, the Further Notice ignores the Educational Parties comments in the earlier round of this docket to the effect that the FCC must not use a window procedure to "manage" [that is, to slow down] the flow of applications. The Educational parties pointed out in their original comments that the Notice of Proposed Rulemaking, FCC 93-90 ("NPRM"), hinted that the window procedure would be used in exactly this manner. At ¶7, the NPRM stated that "use of a filing window will allow the staff to control the flow of applications" This suggested that the staff might open windows infrequently (for example, only when all applications previously on file, regardless of merit or pressing need, had been processed to conclusion).

3/ The Commission's fixation on the place of ITFS reception in the Further Notice is consistent with its overly restrictive focus on the time of reception in the recent Report and Order in MM Docket No. 93-106, FCC 94-147 (released July 6, 1994), dealing with channel loading. In the Report and Order, the FCC stated a policy that ITFS transmissions after-hours for taping purposes would not be credited toward the "substantial use" requirement. On August 5, 1994, several of the Educational Parties petitioned for reconsideration of that policy, arguing that the practice of taping ITFS transmissions during off-hours for later replay is a legitimate distributional tool that increases flexibility and efficiency of ITFS operations and reduces costs. The Commission needs to abandon its preconceptions with respect to both time and place of ITFS use and defer to educators' plans as they develop to meet ever-changing needs.

The Educational Parties also previously pointed out that the NPRM, at ¶ 6 and n. 8, specifically referred to the LPTV service's window procedure as a model to be followed in the ITFS service. However, the Educational Parties research showed that the LPTV Branch did exactly what the Educational Parties fear most -- obstructed the reasonable flow of LPTV applications by opening filing windows on the average of 14-16 months apart.^{4/} This approach -- no doubt convenient for "management" purposes -- helped to ensure that the LPTV service is in the moribund state that it is today. The FCC simply cannot allow this same process to take place in ITFS. Windows opened 14 or 16 months apart would decimate the development of ITFS and wireless cable, to the ultimate detriment of the public the FCC is sworn to serve.

The FCC's rules for the window procedure should specify a minimum yearly schedule of application windows for new stations and major changes. The Educational Parties now believe that there should be at least four windows each year opened on a quarterly basis. Such a schedule would accommodate PTFP-related ITFS

4/ The window procedure for LPTV was adopted effective December 26, 1984 by the Report and Order in MM Docket No. 83-1350, 102 FCC2d 929 (1984). As of the filing of the original comments in this docket, the FCC had opened only eight windows in the ensuing nine years and four months, one of which only applied to applications in Alaska. If the seven general application windows were considered, the average time between windows was 16 months. Moreover, the first general window was not opened for 2 1/2 years after the adoption of the window procedure.

applications.^{5/} A fixed schedule would also permit applicants to plan their filings in advance of the 60-day announcement of the window and would provide a minimum level of flexibility as Educational Parties and wireless cable operators develop their plans.

The Educational Parties have one additional important concern with the proposed window procedure, a concern that they expressed in their original comments but the Commission ignored in the Further Notice. In the Second Report and Order in Gen. Docket No. 90-54, 6 FCC Rcd 6792 (1991), the FCC adopted rules permitting commercial entities to file for vacant ITFS channels in certain circumstances. A critical component of this highly contentious procedure, enacted to protect the essential educational purpose of the ITFS service, called for providing educators with notice of such filings and an opportunity to file mutually exclusive ITFS applications that would have absolute priority over the commercial proposals. These protections -- notice and opportunity to file -- must be retained under any window filing procedure. The Educational Parties expect that ITFS applications by commercial entities would have to

^{5/} In paragraph 12 of the Further Notice, the FCC proposes another approach for NTIA-related applications, permitting them to be filed outside of a window period. Such applications would be considered as having been filed during the immediately following window. If the FCC were to adopt a regular schedule of quarterly windows as the Educational Parties urge, no particular accommodation to NTIA-related applicants would probably be necessary, other than the coordinated and sometimes expedited processing now accorded such applications in order to enhance their prospects of funding. In the absence of regular filing windows, the FCC's approach in paragraph 12 doesn't much help. If the FCC were to open only a single window each July, NTIA-related applications could certainly be tendered in January of each year, but could not be cut off until the close of the window in July, probably meaning that there would not be sufficient time for the FCC to process the application in time for NTIA's funding decision deadline, which typically falls in late July to late August each year.

be filed in windows as with any other ITFS applications. Then, with respect to these commercial applications only, an "A" cutoff list or other appropriate notice would have to be issued that provides at least 60 days for educators to file competing applications as currently permitted under the procedure adopted in the Second Report and Order. Alternatively, a full-blown A/B cutoff procedure could be used for these applications. One way or another, the window procedure must uphold the carefully crafted compromise established in Docket 90-54.

Other Proposals to Improve the Application Process

The Further Notice also puts forward a number of other proposals to curb potential abuses of the ITFS application process. The Educational Parties believe that many of these proposals would add significantly to the burden of applying for and processing ITFS applications and are not of sufficient value to outweigh the burdens they would impose. Some of the proposals, however, have merit and should be adopted.

Financial Qualifications. The FCC requests comment on a proposal that applicants submit proof of their financial ability to construct. This could include separate financial documentation for each ITFS station applied for, as well as documentation from a wireless cable lessee in the event it is paying for construction of the facilities. The FCC understand that, while this may deter speculative applications, the proposal would also entail significant costs.

The Educational Parties urge the Commission not to adopt financial documentation requirements for ITFS applications beyond the provision of information now requested in Section III of FCC Form 330. The Educational Parties concur with the Commission's concern that any increased requirements would impose a significant burden on ITFS applicants and on FCC staff resources. Financial documentation would also provide fertile ground for petitions to deny by competing applicants or other parties seeking to obstruct or delay ITFS or wireless cable service. At most, the Commission might consider a requirement that new ITFS applicants relying on a wireless cable lessee include a demonstration or certification from the lessee that it has sufficient funding available to construct the ITFS station.^{6/}

The Commission has over the years developed a "reasonable assurance" standard to judge the financial qualifications of noncommercial educational broadcast applicants, subjecting them to more lenient requirements than commercial broadcast applicants. Northeastern Educational Television of Ohio, Inc., 47 RR2d 1207, 1209 (1980). The same standard has been applied to ITFS. See, School District No. 1 in the City and County of Denver and the State of Colorado, 3 FCC Rcd 6382 (1988). The standard recognizes the special fiscal realities of public and nonprofit entities which often rely on donations, grants, institutional budgets and legislatively appropriated funds. This

^{6/} Such a demonstration or certification, if submitted by the ITFS applicant in good faith, should not be considered a representation by the applicant of the lessee's financial capability. It would be an unfair burden on an ITFS applicant to guarantee the financial ability of its lessee beyond that deemed sufficient by the applicant to have entered a lease in the first place.

financial qualification standard is fully appropriate for the ITFS service, and no stricter requirements should be imposed. In potentially abusive cases, ample other indicia of abusive intent will be apparent and can be acted on by the Commission, if it has the will to do so.

Application Caps. The FCC seeks comment on proposals originally made by the Educational Parties to limit the number of certain types of applications that can be filed during a given window. One suggestion was for a cap of 25 applications associated with the same wireless cable entity. Another proposal was for a cap of between three and five applications that an individual non-local ITFS entity could file during the window. The Further Notice suggests that these proposals might diminish the number of applications submitted, but could also obstruct the rapid development of ITFS and wireless cable systems. The Further Notice also raises questions about the Commission's ability to "discriminate" against non-local applicants.

Since raising the idea of an application cap, the Educational Parties have come to understand that certain undeniably bona fide wireless cable operators are developing systems in a number of markets and would be severely restricted in their efforts by the proposed 25-application cap for ITFS parties backed by a particular wireless cable entity. Unfortunately, experience shows that certain less scrupulous wireless cable promoters have been behind dozens, if not hundreds, of ITFS applications, even for markets where there has not been any significant wireless cable developmental activity. The Educational Parties suggest that a cap on applications backed by any given

wireless cable entity (and those in privity with such an entity) be applied to markets where the wireless cable backer does not already control by lease or ownership any licensed ITFS or MDS channels. This would limit wireless cable entities to seeking to develop wireless cable markets from scratch to pursuing no more than five such markets in any given window.

With respect to limits on ITFS applicants themselves, the Educational Parties also understand that, in certain circumstances, a legitimate local educational entity seeking to develop a distance learning system might need to apply for more than five new stations at a time.^{2/} The Educational Parties therefore propose no application limits on local educational entities.

However, the Educational Parties believe there is ample basis for a reasonable cap of between three and five applications per window by non-local applicants. New ITFS applications by such entities are, as a matter of reality, often prepared and filed at the suggestion of wireless cable entities who have tried but failed to interest local educators. Having no local connections, the non-local applicants need to introduce their proposed services to local educators, obtain their consent to become receive sites and develop local programming committees. It is reasonable to conclude that these efforts, if done well, cannot be replicated many times over in any given filing opportunity.

^{2/} The University of Maine System is a good example. Early on in its process of applying for a statewide ITFS system, it applied for as many as 15 licenses at one time. The system has now been expanded to 30 operating stations.

There is ample legal precedent for the "proposed discrimination" against non-local applicants. In the Second Report and Order in MM Docket No. 83-523, 101 FCC2d 49, 56 (1985), the FCC determined that "locally based educational entities are the best authorities for evaluating their educational needs and the needs of those they propose to serve in their communities, for designing courses to suit those needs, and for scheduling courses during the school year." Thus, the FCC's basic eligibility and comparative criteria for ITFS "intentionally and decidedly favor such parties as licensees." Memorandum Opinion and Order in MM Docket No. 83-523, 59 RR2d 1355, 1358 (1986).^{8/} With respect to a limit on the number of applications a non-local applicant can file in a given window, there is thus ample basis for the FCC to make a judgment with a view toward determining how many bona fide proposals could be effectively developed at any one time by a non-local entity. The Educational Parties continue to suggest a cap between three and five applications per window by non-local applicants.

Expedited Consideration Process. Another proposal is to give expedited consideration to ITFS applicants in return for the applicants agreeing to an accelerated construction schedule of six months. Extensions would rarely be granted under such a procedure, and only under compelling circumstances.

^{8/} Although the local preference was not directly challenged on appeal, a grant of an application based on the local preference in ITFS was upheld by the United States Court of Appeals for the District of Columbia Circuit in Hispanic Information and Telecommunications Network, Inc. v. FCC, 865 F.2d 1289 (1989).

The Further Notice suggests that the proposal would be impractical to implement as the staff would have to expend substantial resources determining which applications were eligible for expedited consideration and enforcing the relevant requirements, including the construction deadline. Also, the Further Notice suggested that the likely substantial number of applicants requesting expedited consideration could defeat the purpose of the proposal.

The Educational Parties agree. They believe that legitimate educators will often have trouble committing to a six-month construction schedule, particularly those that do intend to lease excess capacity. In view of the likely substantial number of applicants connected with wireless cable proponents requesting expedited consideration, these other ITFS applications may end up on the bottom of the application pile after each window. All in all, the Educational Parties believe the Commission should rely on the efficiencies to be gained by this proceeding, as well as bolstered staff resources, to ensure timely action on ITFS proposals. The staff should also continue its current practice, much appreciated by the educational community, of being responsive informally to particular timing needs. A formal structure for expedited consideration should be rejected.

Assignment of Construction Permits. The Further Notice requests comments on a proposal to limit the allowable consideration for transfers of authorizations (incorrectly referred to as "construction permits") for unbuilt ITFS facilities to out-of-pocket expenses, as is now applied to sale of broadcast construction

permits. The Educational Parties support this proposal. They believe it makes sense to deter speculation and trafficking in licenses.

Application of the Four-Channel Rule. The Further Notice also requests comments on how the FCC should define the term "area of operation" for the purpose of Section 74.902(d) that limits an ITFS licensee to four channels in a single area of operation. According to the Further Notice, the staff currently uses a 20-mile figure, meaning that two ITFS stations will be deemed to be serving the same "area of operation" if their transmitters are within 20 miles of each other. Alternatively, the Further Notice asks whether the FCC should define "area of operation" in terms of interference.

The Educational Parties believe that neither proposed standard is appropriate for the purpose of applying the four-channel limitation. The issue of interference between two stations, assuming they were co-channel, is simply irrelevant to the issue whether an educator should be permitted to apply for a second ITFS station in any given area. Frankly, so is the arbitrary 20-mile figure.

Instead, the Educational Parties suggest that the FCC adopt a functional test that looks to whether a second ITFS station is necessary to serve receive sites that cannot reasonably be served by the first ITFS station. If all of the receive sites desired to be served by the educator can be served from both stations, they obviously are duplicative and the grant of a second license would require a waiver of the four-channel rule. This is the typical situation involving four-channel waivers, where both stations

operate with the same facilities from the same site. Obviously, any waiver in such circumstances needs to be based on the licensee's need for more transmission capacity than that available for one station. However, if due to terrain or other reasons an educator needs a second facility to serve its receive sites, there is no logical reason why it should be prevented from doing so, even if the result is some overlap of the service areas of the two stations. Otherwise, the application of the four-channel rule could prevent service to some receive sites.

Offset Operation. The Further Notice asks for comments on a proposal to require offset operation by applicants for new or modified ITFS stations where an interference problem could thereby be resolved. At the current time, the FCC does not require offset even though the technical requirements for ITFS contemplate that new transmitters are capable of offset operation.

The Educational Parties support the adoption of such a requirement. However, they understand that technical tests are ongoing with respect to the appropriate co-channel D/U ratio to determine the existence of co-channel interference in an offset situation. Subject to their understanding that the Commission will consider whether a D/U ratio of greater than 28 dB in such circumstances is appropriate, there is no reason why the FCC should not require offset for new or modified ITFS stations that are required to utilize transmitters with the appropriate level of frequency stability.^{2/}

^{2/} Conversely, existing ITFS operators with older transmitters not capable of offset should not be required to implement offset operations involuntarily.

Protected Service Areas. The **Further Notice** proposes a refinement of the FCC's rules on the issue of protected service areas for ITFS stations that lease excess capacity to wireless cable operators. The FCC's concern is that entities may be requesting and receiving interference protection merely to restrict other licensees from modifying their facilities. If so, the FCC believes this practice could be an abuse of its processes.

The Educational Parties are unaware of the existence of any abuse of this sort. If ITFS licensees are being encouraged to seek protected service areas merely to block service by some other party, the FCC should take action accordingly. However, the Educational Parties understand that any wireless cable operator would reasonably and legitimately want to have its ITFS licensees request protected service areas as permitted by the FCC's rule. Having made that option available, the FCC can hardly criticize any wireless cable operator or ITFS applicant seeking to take advantage of it.

Receive Site Interference Protection. The FCC also requests comment on a proposal to limit the distance a receive site may be from its ITFS transmitter in order to receive interference protection from the Commission. The FCC's current view is that the distance should be no more than 35 miles between the transmitter and receive site.

The Educational Parties have no objection to the adoption of such a "rule of thumb" for ITFS processing. However, paragraph 30 of the **Further Notice** suggests that ITFS applicants could make "a showing of unique circumstances" that might justify

protection beyond 35 miles. In such circumstances, and assuming there is in fact usable service at the receive site, the Commission should protect sites even beyond 35 miles.

Major Modifications. The FCC proposes to change the definition of major modifications in Section 74.911 of the FCC's rules to include a number of changes that currently would be classified as minor changes: polarization changes, additions of receive sites that would experience interference from any licensee or applicant on file prior to the submission of the modification, increases in EIRP in any direction by more than 1.5 dB, increases of 25 feet or more in transmitting antenna height, or any other changes that would cause interference to any previously proposed application or existing facility.

The Educational Parties find this proposal troublesome. Its effect would be to push more applications over the major change line, requiring applicants who can currently file for minor adjustments at any time to wait for filing windows. This will decrease flexibility in FCC processing, to the detriment of existing ITFS licensees.

Under the old A/B cutoff approach, applicants were able to obtain prior notice of major change applications and then have an opportunity to respond with their own filings, if necessary. There was thus some basis to suggest that any applications reasonably having preclusive effect should be classified as major changes. Under a window approach, however, there will never be prior notice that one party or another might file an application that could turn out to be preclusive of some other application.

In these circumstances, allowing modification applications to proceed as minor changes does not create as difficult a "preclusion" problem.

Even if the FCC decides that certain additional types of applications should be major, not minor, judgments should be made separately with respect to each type. For example, the Educational Parties do not object to re-defining the power increase factor in terms of EIRP instead of TPO, and also concur with the proposal to use 1.5 dB as the cutoff between major and minor changes. The Educational Parties also do not object to classification as major any change that would cause interference to any previously proposed application or existing facility.

However, the Educational Parties are inclined to oppose making polarization changes major in the absence of interference to any previously proposed application or existing facility. Polarization changes are often used to resolve mutually exclusive and interference problems quickly and efficiently. This process should not have to wait for a window. The Educational Parties also oppose making major changes any adjustments in receive sites, as opposed to transmission systems. By definition, the addition or deletion of a receive site should not be regarded as a major change, as it can cause no interference to another party. Finally, the FCC's proposal for antenna height increases of 25 feet or more makes no sense. First, it is unclear whether the 25 foot standard relates to a height above average terrain, above mean sea level or above ground. Under any of those standards, an increase of 25 feet is insignificant compared with the preclusionary effect that is and would continue to be permitted by allowing